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Honorable Frederick P. Corbit
Chapter 11
Location: 904 West Riverside Avenue
Suite 304
Spokane, WA 99201
Hearing Date: _____
Hearing Time: _____
Telephonic: _____

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

9 In re:
10 GIGA WATT INC.,
11 Debtor.

NO. 18-03197
EXECUTIVE FLIGHT, INC.'S MOTION
TO COMPEL REJECTION OF
UNEXPIRED NON-RESIDENTIAL
REAL ESTATE LEASE

12
13 EXECUTIVE FLIGHT, INC. ("Landlord") by way of this Motion to Compel
14 Rejection of Unexpired Non-Residential Real Estate Lease, pursuant to 11 U.S.C. §365 and
15 11 U.S.C. §362, states as follows:

16 **I. JURISDICTION AND VENUE**

17 1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and
18 1334. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a
19 core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

20 2. The statutory predicates for the relief requested herein are sections 105(a), and
21 365(a), of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 6006 of the
22 Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

23 **II. BACKGROUND**

24 3. On or about November 19, 2018 (the "Petition Date"), Debtor filed a voluntary
25 petition for relief under chapter 11 of the Bankruptcy Code.
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EXECUTIVE FLIGHT, INC.'S MOTION TO COMPEL
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EXE001-0005 5600913

1 4. In 2017, Landlord leased commercial property located at One Campbell
2 Parkway, East Wenatchee, WA 98802 ("Premises") to Debtor by way of a lease and
3 subsequent amendments (all lease documents attached hereto as **Exhibits A-D** respectively;
4 collectively "Lease"). The Lease is scheduled terminate in 2022.

5 5. Monthly rent is currently \$8,047.13. Neither November 2018 nor December
6 2018 rent has been paid. See paragraphs 5 and 7 of supporting declaration of Tom Leonard.

7 6. Landlord has located a potential tenant who is interested in leasing a portion of
8 the Premises and who desires to take occupancy on January 1, 2019. As such, Landlord is
9 requesting that Debtor's lease be rejected. See paragraph 8 of supporting declaration of Tom
10 Leonard.

11 7. Debtor has vacated the Premises, and Debtor's counsel has confirmed Debtor
12 is rejecting the Lease. See paragraphs 5 and 7 of supporting declaration of Tom Leonard.

13 8. It is in the best interest of the Debtor, its creditors, and the bankruptcy estate to
14 reject the Lease to eliminate unnecessary administrative expenses.

15 9. Landlord desires to reclaim control and possession of the leased premises.
16 Again, Landlord has a prospective new tenant who wishes to take occupancy of a portion of
17 the Premises on January 1, 2019. See paragraph 8 of supporting declaration of Tom Leonard.

18 10. Debtor's rent is at market rate. As such, the lease has no value to the estate.
19 See paragraph 9 of supporting declaration of Tom Leonard.

20 **III. BASIS FOR RELIEF REQUESTED**

21 11. Pursuant to 11 U.S.C. 365(d)(2), the Court upon the request of a party to an
22 unexpired lease, may order the trustee or debtor to determine within a specified period of time
23 whether to accept or reject the unexpired lease.

24 12. The Debtor desires to reject the lease and does not contest the relief requested.
25
26

1 13. The Debtor and Landlord are parties to an unexpired lease. The Debtor has
2 vacated the Premises and has no interest in using the Premises covered by the Lease or in
3 undertaking the payment obligations required by the Lease. Accordingly, Landlord requests
4 that this Court order Debtor to reject the Lease effective upon entry of this Court's order on
5 this Motion.

6 14. Alternatively, pursuant to 11 U.S.C. §362(d)(2) and §362(a)(3), the automatic
7 stay should be terminated so that Landlord can regain possession of the leased premises that
8 Debtor has already vacated and is not interested in occupying.

9 15. The significance of rejection under Section 365 is that it relieves the estate of
10 onerous and burdensome future obligations. See *In re Shangra-Law, Inc.*, 167 F.3d 843, 849
11 (4th Cir. 1999) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984)).

12 16. Landlord asserts that Debtor has determined that the Lease is of no further
13 value to the estate and does not object to the rejection of the Lease as soon as possible.
14 Moreover, the rent called for in the Lease is at market rate. Again, the lease is of no value to
15 the estate.

16 IV. CONCLUSION

17 17. Based on the foregoing, the rejection of the Lease under Section 365(a) of the
18 Bankruptcy Code is in the best interest of the Debtor and the Debtor's estate.

19 WHEREFORE, the Landlord respectfully requests that the Court enter an order: (a)
20 compelling the rejection of the Lease and deeming the Lease rejected pursuant to Section
21 365(a) of the Bankruptcy Code, effective at the entry of the Court's order granting this
22 Motion; (b) preserving the Landlord's right to seek an administrative claim pursuant to 11
23 U.S.C. §§ 365(d)(3) and 503(b)(1)(A) for unpaid post-petition rent and charges; and (c)
24 providing such further relief as is just and proper.
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2 DATED this 5th day of December, 2018.
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4 CARNEY BADLEY SPELLMAN, P.S.

5 By /s/Scott R. Weaver

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EXECUTIVE FLIGHT, INC.'S MOTION TO COMPEL
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